

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 January 2020

**Public Authority:** The National Lottery Community Fund  
**Address:** 1 Plough Place  
London  
EC4A 1DE

#### Decision (including any steps ordered)

---

1. The complainant has requested information relating to a grant provided to Soho Road Business Improvement District (BID). The National Lottery Community Fund (NLCF) answered most of the questions asked and provided some information but stated it did not hold information on the number of magazines published and refused to provide unredacted copies of invoices on the basis of section 43(2) of the FOIA.
2. The Commissioner's decision is that the NLCF does not hold any further information on the number of magazines published and has correctly withheld the full content of the invoices on the basis of section 43(2).

#### Request and response

---

3. On 26 December 2018 the complainant made a request to the NCLF. This request followed an earlier request from October 2017 relating to money given to Soho Road Business Improvement District (BID). The previous FOI response had provided some information. The new information request asked for full transparency in relation to the public money given out to the BID. The request had several numbered parts:

*"1) The receipts provided by this BID regarding the booklets printed using public money, on the receipts it mentions quality of booklets printed was 1."* The complainant asked why the quality was not shown on these receipts and asked how the Soho First booklets were delivered, if someone was paid and how much, and how much the booklets cost to print.

*2) How many Large plant & small containers were brought by this BID using this public money funding why was this not shown on the receipts? Why wasn't this provided? As in total about 90 of these plant containers have been put on the street in this BID area, yet evidence provided how many of these planters were actually brought?"*

*3) Also how many plants were brought it doesn't show this why? Not transparent, all it says on the receipts plant PETUNIAS. But no mention how many plant were brought? Is that being transparent, surely the receipts would show how many plants were brought?*

*4) Also by not showing the cost, can hide this costs, which by showing this cost would and may have exposed there was overcharged for the plants? And value for money was not achieved.*

*5) Also why is there No cost to soil put into the plant Containers? Where is the receipt for this?*

*5) Why was not receipts provided for the Paint and tools?*

*6) Then receipts provided show Maps printed using this Public money, yet there was no funding provided to print these Maps, is that correct? Also how much did it cost to print these Maps?"*

4. The NLCF responded on 25 January 2019. It stated that since it had responded to a previous information request it had now obtained additional information and gave figures for the total number of magazines published, confirmed maps were held and gave details of the plants purchased. The NLCF stated information was being withheld from documents being provided on the basis that it either constituted personal data or was commercially sensitive (bank details). It stated information on the soil for the containers and the time taken to paint railings was not held. Finally, the NLCF stated that detail in the receipts that were previously disclosed would not be provided as it was commercially sensitive.
5. The complainant asked for an internal review on 29 January 2019. He raised concerns that the number of magazines actually distributed was not the number that the Soho BID stated would be distributed and asked the NLCF to provide evidence that 60,000 magazines were printed and distributed. The complainant also asked the NLCF to consider disclosing information on the total amount of money spent by Soho BID on producing the magazines.
6. The NLCF responded with the outcome of the internal review on 13 February 2019. The internal review focused on the two areas referred to by the complainant in the internal review request. The NLCF stated it had checked if formal documentation had been provided by Soho BID to

confirm the number of magazines produced but had not identified any information that it held in this regard.

7. The NLCF concluded that it had correctly withheld information from the invoices it had provided and clarified the reasons for considering section 43(2) of the FOIA was engaged.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 20 March 2019 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of her investigation to be to determine if the NLCF has correctly withheld information from the invoices on the basis of section 43(2) of the FOIA and if NLCF holds any further information on the number of magazines produced.

### **Reasons for decision**

---

#### **Section 1 – is the information held?**

10. The main point of the complainant's internal review request to the NLCF related to the lack of information provided on the number of magazines actually distributed versus the number that Soho BID stated would be distributed. The complainant asked for information to be provided showing that 60,000 magazines were printed and distributed as stated by Soho BID they would be. The NLCF stated that no further information on this was held and the complainant disputed this.
11. Section 1 of the FOIA states that any person making a request for information is entitled to be told whether the public authority holds the information requested and, if held, to be provided with it.
12. The issue for the Commissioner to determine is whether, on balance, the NLCF holds any recorded information on the number of magazines printed by Soho BID that has not already been provided.
13. The NLCF has explained that it does not, as standard, hold information at the level of detail requested by the complainant. Receipts and invoices are not requested from grant holders i.e. Soho BID outside of NLCF's expenditure monitoring control period which begins 12 months plus 30 working days after the start of the project year. This is when NLCF would notify the funded organisation they are required to provide evidence of expenditure.

14. At the time of the request the NLCF did not hold the information requested as the 12 month period had not yet expired so no evidence of expenditure had been requested from Soho BID. However, to be certain NLCF asked its grant teams who manage the end-to-end grant application process to check if any information was held. The grant teams conducted searches on the funding management system, application forms and telephone notes to ascertain if any relevant information was held and confirmed it was not.
15. Following the internal review request, the NLCF conducted further searches, this time manually to reconfirm if relevant information was held. Again, these searches were conducted by the grant teams with oversight by the Corporate Manager and again no information was found. The Commissioner has had sight of an email which confirms the searches that were conducted and the conclusion that no relevant information was held.
16. The NLCF did obtain invoices and receipts but stated that these did not show the total number of magazines produced and nor was there any formal evidence that showed that 60,000 magazines were produced.
17. The complainant in this case does not accept that the NLCF has no record of exactly how the grant money was spent, in the level of detail of knowing how many magazines were printed and plants were planted.
18. The Commissioner considers that NLCF has made substantial attempts to answer the questions the complainant has asked and to provide information where it can do. In some cases, this has resulted in the NLCF obtaining information from Soho BID that it would not routinely collect as part of its expenditure monitoring with a view to providing answers to the complainant. The NLCF believes that this, rather than being helpful, has caused confusion as to what information the complainant expects the NLCF to hold or have access to.
19. In cases where there is a dispute over the amount of information which is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.
20. In this case, based on the representations provided by the NLCF the Commissioner considers that its assertion that it does not hold the information is reasonable. The Commissioner understands that once the NLCF has awarded a grant it does not require substantial documentary evidence from the grant holder to show how every penny has been spent. It does have an expenditure monitoring period approximately a

year after the grant has been awarded to ensure that the money has been spent on achieving the aim or project the grant was awarded for but this does not require every invoice and receipt to be provided. In this case, the Commissioner understands some of the invoices the NLCF obtained (including the one discussed under the section 43 analysis below) were only requested from Soho BID as a result of this request and in hindsight NLCF acknowledged they should not have asked Soho BID to supply this to respond to an information request.

21. As such, the Commissioner is satisfied with the explanations provided by the NLCF and has no reason to dispute that it does not hold the requested information as it is not information that would routinely be required to be provided to the NLCF by the grant holder. The NLCF has undertaken searches to ensure no relevant information is held and the Commissioner is satisfied these searches were adequate in the circumstances and were with relevant business areas to identify anything if it were held.
22. The Commissioner is therefore satisfied on the balance of probabilities that the information is not held by the NLCF.

### **Section 43 – commercial interests**

23. Section 43(2) provides an exemption from disclosure where the requested information would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
24. The Commissioner considers that three criteria must be met for the exemption to be engaged:
  - the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed, has to relate to the applicable interests within the relevant exemption;
  - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - it is necessary to establish whether the level of likelihood of the prejudice being relied upon by the public authority is met. In other words, disclosure 'would or would be likely' to result in prejudice.

25. The term 'commercial interests' is not defined in the FOIA. In the Commissioner's guidance on section 43 (Freedom of Information Act Awareness Guidance No 5)<sup>1</sup> the Commissioner considers that:

*"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services".*

26. The Commissioner must consider the prejudice that disclosure of the withheld information would cause in respect of NLCF's commercial interests, and to any other party or parties that would be affected.
27. For the purpose of this case, NLCF has identified that Promarco Promotions Ltd's commercial interests would, or would be likely to be prejudiced if the withheld information was disclosed. The withheld information is the costs within Promarco's invoice for the magazines.
28. NLCF has explained that Promarco have informed them they provided preferential costs to Soho BID and that these charges are not made public. Promarco argues that if the information was obtained by a competitor the costing information could be used in a future contract or tender to gain an advantage by knowing the charges Promarco submitted.
29. In addition to this, it is argued that any individual or organisation approaching Promarco for work would be aware of the level of preferential costs provided to Soho BID and this would, in turn, be likely to affect the negotiating position of Promarco.
30. The NLCF also points to the fact that Promarco is a small enterprise, demonstrated by looking at its published accounts on Companies House. It is trading in an uncertain environment; several larger business in nearby locations to Promarco have gone into administration, suggesting that the availability of capital and investment is limited.
31. The Commissioner has seen evidence that NLCF consulted with Promarco to obtain their objections to the disclosure and this also indicated that Promarco were of the view that a similar project would be coming up the following year which they would tender for and that they

---

1

[https://ico.org.uk/media/fororganisations/documents/1178/awareness\\_guidance\\_5\\_v3\\_07\\_03\\_08.pdf](https://ico.org.uk/media/fororganisations/documents/1178/awareness_guidance_5_v3_07_03_08.pdf)

considered they would be likely to be prejudiced from winning by disclosure of the costs in the invoice.

32. In terms of the three criteria that need to be met for the exemption to be engaged, the Commissioner accepts that the harm that has been alleged as likely to occur does relate to an applicable interest and there is a causal link between the potential disclosure and the argued prejudice and that this prejudice would be real, actual or of substance.
33. The costs in the invoice are clearly commercial information and the prospect of an upcoming tender that Promarco intend to bid for indicates a real and tangible risk of prejudice to Promarco's commercial interests should the information be disclosed. As NLCF points out, Promarco is a small enterprise and it is important they remain competitive in their rates and disclosing the costs in the invoice could have the very real affect of putting them at a competitive disadvantage, both in terms of going up against other company's for contracts and tenders and in terms of negotiating with clients over rates.
34. For these reasons the Commissioner accepts the section 43(2) exemption is engaged in relation to the costs in the invoice.
35. The Commissioner must now go on to consider where the public interest lies in respect of the disclosure or withholding of the requested information.

*The public interest test*

36. The NLCF recognises there is a public interest in transparency but considers this has been demonstrated by the amount of information provided to the complainant.
37. The NLCF also acknowledges there is a public interest in promoting accountability and transparency in the spending of public money and that disclosing the information may increase public trust.
38. However, the NLCF also considers there is a strong public interest in ensuring that relationships between grant holders and commercial partners are preserved and that commercial damage is not done to a small enterprise unnecessarily.
39. The Commissioner recognises the public interest inherent in the disclosure of information which promotes accountability and transparency. This is especially the case in matters which concern the actions and decisions of a public authority which affect the general public and which impact the public purse.



40. Weighed against this is the detrimental effect that disclosure of the requested information would have on the commercial interests of Promarco and its ability to competitively compete for future contracts, that in turn may affect the prices that individuals or organisations pay for printing services in the local area.
41. The Commissioner recognises the complainant has general concerns about the amount charged by Soho BID for the printing of the magazines but she considers that the NLCF has attempted to be as helpful and transparent as possible, disclosing information where it is held with only minor redactions. In this case the NLCF has redacted information to protect the commercial interests of Promarco and there does not appear to be any significant public interest argument for disclosing the details in the invoice, whilst the information may be of interest to the requester it is not clear it would be of wider public interest.
42. The Commissioner is also conscious of the fact that non-profit grant holders like Soho BID need to rely on relationships with businesses (such as Promarco) who in turn need to operate in the commercial environment. The Commissioner considers there is real possibility of a chilling effect occurring between grant holders and commercial partners if it is believed details of costings and invoices may become publicly available and this may impact on costs and value for money that can be achieved and would not be in the public interest when the grants are derived from public money.
43. On balance, the Commissioner considers that the public interest in maintaining the exemption outweighs that in disclosing the withheld information. She is content that the commercial interests identified by the NLCF would be likely to be prejudiced if the information requested by the complainant was to be disclosed. The Commissioner has found no public interest factors which outweigh that prejudice.



## Right of appeal

---

44. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

45. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**